

By: Anderson of Dallas

H.B. No. 3843

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance premium tax credit for low-income housing developments.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. TAX CREDIT FOR LOW-INCOME HOUSING DEVELOPMENTS

Sec. 171.9241. DEFINITIONS. In this subchapter:

(1) "Allocation certificate" means a statement issued by the department certifying that a given development qualifies for a credit under this subchapter and specifying the amount of the credit.

(2) "Compliance period" means the period of 15 years beginning with the first taxable year of the credit period.

(3) "Credit" means the low-income housing tax credit authorized by this subchapter.

(4) "Credit period" means the period of six taxable years beginning with the taxable year in which a qualified development is placed in service. A qualified development consisting of more than one building is not considered to be in service until all buildings in the qualified development are placed in service.

(5) "Department" means the Texas Department of Housing and Community Affairs.

1 (6) "Development" has the meaning assigned by Section
2 2306.6702, Government Code.

3 (7) "Federal tax credit" means the federal low-income
4 housing credit created by 26 U.S.C. Section 42.

5 (8) "Qualified allocation plan" has the meaning
6 assigned by Section 2306.6702, Government Code.

7 (9) "Qualified basis" means the qualified basis of a
8 qualified development, as determined under Section 42, Internal
9 Revenue Code.

10 (10) "Qualified development" means a development in
11 this state that the department determines is eligible for a federal
12 tax credit and that:

13 (A) is financed with tax-exempt bonds;

14 (B) is the subject of a recorded restrictive
15 covenant requiring the development to be maintained and operated as
16 a qualified development; and

17 (C) for the lesser of 15 years after the
18 beginning of the credit period or the period required by the
19 department is in compliance with:

20 (i) all accessibility and adaptability
21 requirements for a federal tax credit; and

22 (ii) Title VIII of the Civil Rights Act of
23 1968 (42 U.S.C. Section 1983).

24 Sec. 171.9242. ENTITLEMENT TO CREDIT. A taxable entity is
25 entitled to a credit against the taxes imposed under this chapter in
26 the amount and under the conditions and limitations provided by
27 this subchapter if the taxable entity is a qualified taxpayer and

1 receives an allocation certificate under Section 171.9243.

2 Sec. 171.9243. ALLOCATION CERTIFICATE; CREDIT. (a) In a
3 year during a credit period, a taxable entity may apply to the
4 department for an allocation certificate for a franchise tax credit
5 under this subchapter.

6 (b) The department shall issue an allocation certificate to
7 a taxable entity that applies under this section and meets the
8 requirements to receive an allocation certificate.

9 (c) The department may determine the amount of a credit
10 allowed to taxable entities, subject to the following:

11 (1) a credit must be the minimum amount necessary to
12 the financial feasibility of the qualified development after
13 considering any federal credit;

14 (2) the amount of the credit given to a taxable entity
15 during the credit period may not exceed the total federal tax credit
16 awarded to the qualified development over the 10-year federal
17 credit period;

18 (3) the credit must be consistent with the qualified
19 allocation plan for the qualified development; and

20 (4) in a year, the total amount awarded may not exceed
21 the sum of:

22 (A) \$20 million;

23 (B) any unallocated credits for the preceding
24 year; and

25 (C) any credit recaptured or otherwise returned
26 to the department in the year.

27 Sec. 171.9244. LENGTH OF CREDIT; LIMITATION. (a) The

1 credit established shall be claimed in equal installments during
2 each year of the credit period.

3 (b) The total credit claimed under this subchapter for a
4 report, including any carryforward under Section 171.9245, may not
5 exceed the amount of franchise tax due for the report after any
6 other applicable credit.

7 Sec. 171.9245. CARRY FORWARD OR BACKWARD. (a) If a taxable
8 entity is eligible for a credit that exceeds the limitations under
9 Section 171.9244, the taxable entity may carry the unused credit
10 back for not more than three taxable years or forward for not more
11 than 10 consecutive reports following the taxable year in which the
12 allocation was made. A credit carryforward from a previous report
13 is considered to be used before the current year installment.

14 (b) A credit that is not used may not be refunded to the
15 taxable entity.

16 Sec. 171.9246. RECAPTURE. (a) The comptroller shall
17 recapture the amount of a credit claimed on a franchise tax report
18 filed under this chapter from a taxable entity if, on the last day
19 of a taxable year, the amount of the qualified basis of a qualified
20 development with respect to a taxable entity is less than the amount
21 of the qualified basis as of the last day of the prior taxable year.
22 The comptroller shall determine the amount required to be
23 recaptured using the formula provided by Section 42(j), Internal
24 Revenue Code, as effective January 1, 2017.

25 (b) A franchise tax return must include any proportion of
26 credit required to be recaptured, the identity of any taxable
27 entity subject to the recapture, and the amount of credit

1 previously allocated to the taxable entity.

2 Sec. 171.9247. ALLOCATION OF CREDIT. (a) If a taxable
3 entity receiving a credit under this subchapter is a partnership,
4 limited liability company, S corporation, or similar pass-through
5 entity, the taxable entity may allocate credit among its partners,
6 shareholders, members, or other constituent taxable entities in any
7 manner agreed by those entities.

8 (b) A taxable entity that makes an allocation under this
9 section shall certify to the comptroller the amount of credit
10 allocated to each constituent taxable entity or shall notify the
11 comptroller that it has assigned the duty of certification to one
12 constituent taxable entity that shall provide the notification to
13 the comptroller. Each constituent taxable entity is entitled to
14 claim the allocated amount subject to any restrictions prescribed
15 by this subchapter.

16 (c) An assignment under this section is not a transfer.

17 Sec. 171.9248. FILING REQUIREMENTS AFTER ALLOCATION. A
18 taxable entity that allocates a portion of the credit under Section
19 171.9247, and each taxable entity to which a portion was allocated,
20 shall file with the taxable entity's report a copy of the allocation
21 certificate received by the taxpayer for that year.

22 Sec. 171.9249. RULES; PROCEDURES. The department and
23 comptroller, in consultation with each other, shall adopt rules and
24 procedures to implement, administer, and enforce this subchapter.

25 Sec. 171.9250. COMPLIANCE MONITORING. (a) The department,
26 in consultation with the comptroller, shall monitor compliance with
27 this subchapter.

1 (b) The department shall report any instances of
2 noncompliance with this subchapter to the comptroller.

3 Sec. 171.9251. REPORT. (a) Not later than December 31 of
4 each year, the department shall deliver a written report to the
5 legislature. A report delivered in this section must:

6 (1) specify the number of qualified developments to
7 have been allocated a tax credit during the year under this
8 subchapter or Chapter 230, Insurance Code, and the total number of
9 units supported by the developments;

10 (2) describe each qualified development to receive a
11 tax credit under this subchapter or Chapter 230, Insurance Code,
12 including:

13 (A) location;

14 (B) household type;

15 (C) demographic information available on the
16 residents intended to be served by the development;

17 (D) the income levels intended to be served by
18 the development; and

19 (E) the rents or set-asides authorized for the
20 development;

21 (3) include housing market and demographic
22 information to demonstrate how the qualified developments,
23 supported by the tax credit, are addressing the need for affordable
24 housing in their community; and

25 (4) analyze any remaining disparities in the
26 affordability of housing within those communities.

27 (b) The department shall make a report delivered under this

1 section available to the public.

2 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
3 by adding Chapter 230 to read as follows:

4 CHAPTER 230. CREDIT AGAINST PREMIUM TAXES

5 FOR LOW-INCOME HOUSING DEVELOPMENTS

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 230.001. DEFINITIONS. In this chapter:

8 (1) "Allocation certificate" and "credit period" have
9 the meanings assigned by Section 171.9241, Tax Code.

10 (2) "Qualified taxpayer" means a person that owns an
11 interest in a qualified development, as that term is defined in
12 Subchapter V, Chapter 171, Tax Code.

13 (3) "State premium tax liability" means any liability
14 incurred by an entity under Chapters 221 through 226.

15 SUBCHAPTER B. CREDIT

16 Sec. 230.051. CREDIT. (a) An entity is eligible for a
17 credit against the entity's state premium tax liability in the
18 amount and under the conditions and limitations provided by this
19 chapter if the entity is a qualified taxpayer and receives an
20 allocation certificate issued in the manner prescribed by Section
21 171.9243, Tax Code.

22 (b) The amount of the credit is equal to the amount provided
23 by the allocation certificate.

24 Sec. 230.052. LENGTH OF CREDIT; LIMITATION. The entity
25 shall claim the credit in the manner provided by Section
26 171.9244(a), Tax Code, subject to the limitation provided by
27 Section 171.9244(b), Tax Code. The entity may carry a surplus

1 credit forward or backward as provided by Section 171.9245, Tax
2 Code.

3 Sec. 230.053. APPLICATION FOR CREDIT. (a) An entity must
4 apply for a credit under this chapter on or with the tax return for
5 the taxable year for which the credit is claimed and submit with the
6 application the allocation certificate issued to the entity and any
7 other information required by Subchapter V, Chapter 171, Tax Code.

8 (b) The comptroller shall adopt a form for the application
9 for the credit. An entity must use this form in applying for the
10 credit.

11 Sec. 230.054. RULES; PROCEDURES. The comptroller and the
12 Texas Department of Housing and Community Affairs, in consultation
13 with each other, shall adopt rules and procedures to implement,
14 administer, and enforce this chapter.

15 Sec. 230.055. The provisions of Subchapter V, Chapter 171,
16 Tax Code, relating to recapture, allocation of credit, filing
17 requirements after allocation, and compliance monitoring apply to
18 the credit authorized by this chapter.

19 SECTION 3. This Act applies only to an original report due
20 on or after the effective date of this Act.

21 SECTION 4. This Act takes effect January 1, 2018.